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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of ELENA THIBAULT and MARC THIBAULT.	
ELENA THIBAULT, Appellant, v. MARC THIBAULT, Respondent.	A142861 (Alameda County Super. Ct. No. RF09438887)

Elena Thibault appeals from an order denying her request for a temporary restraining order under the Domestic Violence Prevention Act (Fam. Code,[1] § 6200 et seq.).[2] She contends that the court abused its discretion in denying her application for a restraining order, refusing to hold an evidentiary hearing, and requiring her to show a "physical act" to justify issuance of the order. We affirm.

I. FACTUAL BACKGROUND

Preliminarily, we note that Thibault has not provided a properly supported statement of facts in her opening brief. The California Rules of Court require that

[1] Unless otherwise indicated, all further statutory references are to the Family Code.

[2] The order is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6) [appeal may be taken from an order refusing to grant an injunction]; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 332 (*Nakamura*).)

litigants provide a summary of the significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204 (a)(1)(C), (2)(C); see *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500, 503, fn. 1 (*Arbaugh*) [failure to comply with the Rules of Court requiring summary of material facts supported by appropriate references to the record may constitute waiver of error].) Thibault's status as a pro per litigant does not excuse her from the duty to comply with the rules. An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

Here, Thibault's statement of facts is bereft of any citations to the record. In addition, she appears to have incorporated only her view of the facts. This one-sided presentation of the evidence violates another established rule of appellate practice. An appellant must fairly set forth all of the significant facts, not just those beneficial to her. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Although Thibault's brief fails to comply with the rules, in the interest of justice, we have considered the appeal on the merits. (*Arbaugh*, *supra*, 80 Cal.App.3d at p. 503, fn. 1; *Copfer v. Golden* (1955) 135 Cal.App.2d 623, 635.)

So far as we can ascertain, Thibault filed for a divorce in 2009.[3] The parties have one child, a son, age 10, who lives with respondent. Thibault has overnight visitation with her son on Wednesdays and on weekends, and the parties share visitation during holidays and the summer.

On June 13, 2014, Thibault filed a request for a domestic violence restraining order (DVRO), alleging that she needed protection from respondent because he verbally abused and harassed her, and embarrassed her in public. She also alleged that respondent coaches her son by telling him that she abandoned him in 2006.[4]

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[3] The date of the divorce is not in the record.

[4] The parties apparently agreed to have their son live with Thibault's mother in Russia for some extended period beginning in 2006. The exact time period of his stay in Russia is not clear from the record.

On July 1, 2014, the court held a hearing on Thibault's request for a DVRO. The court denied the request, finding that Thibault had not alleged any incidents of domestic violence. The court remarked, "It's no surprise to the Court that there's allegations of coaching the child, manipulating the child. Each parent seems to hate the other parent. Each parent seems to not be able to cooperate with the other parent, communicate with the other parent, [and there is a] lack of trust for the other parent. That seems to be clear from the record, but that is not domestic violence." The court found that there was no evidence of domestic violence and denied Thibault's request for a DVRO.

II. DISCUSSION

Thibault first contends that the trial court abused its discretion by not holding an evidentiary hearing on her request for a DVRO.[5] This contention lacks merit.

At the hearing on Thibault's request for a DVRO, the court gave Thibault numerous opportunities to present evidence to support her request for a restraining order. The court explained that what Thibault had alleged in her moving papers did not constitute domestic violence. Thibault admitted that respondent had not physically harmed her, and did not present any additional evidence for the court's consideration. She has waived any claim concerning the adequacy of the hearing.

Thibault also argues that the court erred in requiring her to show a "physical act" to justify the DVRO rather than relying on her allegations of abusive behavior. While we agree with Thibault that the requisite abuse under the DVPA need not be actual infliction of physical injury or assault (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 201–202), she did not allege the type of abuse, including stalking, threatening, harassing, or annoying telephone calls, that would support the issuance of a protective order. (See *ibid.*, § 6320.) Thibault's declaration set forth a long history of communication problems with respondent, allegations of coaching and manipulation of their son, problems with the

[5] Respondent has not filed a brief. We therefore decide the appeal " 'on the record, the opening brief, and any oral argument by the appellant' [Cal. Rules of Court, rule 8.220(a)(2)], examining the record and reversing only if prejudicial error is shown." (*Nakamura*, *supra*, 156 Cal.App.4th at p. 334.)

visitation schedule, missed appointments, and the payment of dental insurance, among other issues. None of these allegations, however, amount to abuse within the meaning of section 6320.

Thibault also argues that the court abused its discretion by requiring her to show a recent act of abuse in order to support issuance of a DVRO. Our review of the hearing transcript indicates that the court was fully familiar with the parties and their long record of discord, and was simply inquiring if something had happened since their last hearing—a child custody hearing on June 17, 2014—that required a restraining order. As the court explained, Thibault was required to show abuse to support issuance of a DVRO.

Thibault's reliance on *Eneaji v. Ubboe* (2014) 229 Cal.App.4th 1457 is misplaced. There, the former wife applied to renew her restraining order against her former husband. (*Id.* at p. 1459.) The court held that the wife was not required to show further abuse to justify a renewal of the order. " 'If [a showing of further abuse] were the standard, the protected party would have to demonstrate the initial order had proved ineffectual in halting the restrained party's abusive conduct just to obtain an extension of that ineffectual order. Indeed the fact a protective order has proved effective is a good reason for seeking its renewal.' " (*Eneaji*, at p. 1464, quoting *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1284.)

Here, Thibault failed to show any prior abusive incidents of domestic violence. She simply failed to allege a sufficient basis for the issuance of a DVRO.

Nakamura, supra, 156 Cal.App.4th 327 and *Gou v. Xiao* (2014) 228 Cal.App.4th 812, cited by Thibault, are distinguishable. In both cases, the victims alleged that their spouses committed instances of past physical abuse, but the trial courts failed to issue restraining orders. (*Nakamura, supra,* 156 Cal.App.4th at pp. 333, 337 [spouse threw lamp at wife, sprayed her with water, shoved her out of the house in the rain]; *Gou, supra,* 228 Cal.App.4th at pp. 814–815 [spouse "whipped" child with a long rubber stick, bit wife].) In view of the sufficiency of the victim's factual representations, the appellate courts held that the trial courts had abused their discretion in failing to issue DVPAs.

(*Nakamura, supra,* at p. 337; *Gou, supra,* at pp. 818–819.) Thibault's allegations, in contrast, do not rise to the level of abuse sufficient to justify the issuance of a DVRO.

Thibault also argues that respondent's past acts demonstrate "disturbing the peace of the other party" within the meaning of the DVPA. (§ 6320.)

The *Nakamura* court explained that a court may "enjoin 'disturbing the peace of [another] party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.' (§ 6320.) A trial court is vested with discretion to issue a protective order under the DVPA simply on the basis of an affidavit showing past abuse. Specifically, it 'may' issue an order 'with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.' (§6300.)" (*Nakamura, supra,* 156 Cal.App.4th at p. 334.)

Thibault's declaration fails to show evidence of past acts of abuse to support issuance of a DVPA. At most, her declaration shows that the parties disagree on issues relating to their son's upbringing, including when he needs to see a doctor, who should pay for his dental expenses and clothing, and the appropriateness of e-mails to their son's school and others. None of these allegations amount to abuse or disturbing the peace within the meaning of the DVPA.

In re Marriage of Hartmann (2010) 185 Cal.App.4th 1247 and *In re Marriage of Candiotti* (1995) 34 Cal.App.4th 718, cited by Thibault, are inapposite. Neither case involved an order under the DVPA. *Hartmann* addressed an order restraining a party from interfering with a custody order. (*Hartmann, supra,* 185 Cal.App.4th at p. 1248.) *Candiotti,* in turn, concerned a protective order issued in the course of a discovery dispute in a child custody matter. (*Candiotti, supra,* 34 Cal.App.4th at pp. 720–721.) The cases are not pertinent to the issue here.

Finally, Thibault contends that respondent has engaged in harassment by sending inappropriate e-mails falsely accusing her of abandoning her son. The record fails to support Thibault's claim of harassment.

We agree with the trial court that the parties, as evidenced by their e-mail exchanges, appear to be unable to communicate with or trust each other. The purpose of the DVPA, however, is to prevent the recurrence of domestic violence perpetrated against a former spouse or cohabitant. (§ 6211; *Nakamura, supra,* 156 Cal.App.4th at p. 334.) It does not provide for the issuance of a restraining or protective order to prevent the parties from sending occasional e-mails concerning missed meetings and their son's medical condition.[6]

III. DISPOSITION

The order is affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Streeter, J.

[6] The record contains four e-mail exchanges between the parties—emails sent in January 2013, March 2013, August 2013, and March 2014.